

The Flinn Report

Illinois

Regulation

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Joint Committee on Administrative Rules

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

AIDS PREVENTION

The DEPARTMENT OF PUBLIC HEALTH adopted a new Part titled "Perinatal HIV Prevention Code" (77 Ill Adm Code 699), effective 5/4/06, to implement Public Act 93-566. The rules require counseling and (1) voluntary testing of pregnant women for the human immunodeficiency virus (HIV), (2) voluntary rapid HIV testing at labor and delivery if the mother's current HIV status is unknown, and (3) newborn testing within 48 hours after the infant's birth when the mother's HIV status is not documented unless the parent or guardian provides written refusal of the test. Post-delivery follow-up services are required for mothers and infants who test positive for HIV. Other covered topics include definitions, written policies and procedures, counseling, approved HIV tests, test result disclosure, and consent forms. Changes since 1st Notice expand counseling requirements to include information about HIV infection and transmission, the meaning of test results, HIV prevention methods, and information concerning availability of referrals for further information or counseling. Also, the written informed consent form used before rapid HIV

testing specifies that "confirmed HIV test results" may be released under certain circumstances rather than "HIV information", and clarity is provided concerning who may lawfully receive such information. Those affected by this rulemaking include health care facilities and medical personnel providing prenatal medical care or labor and delivery services.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson, 5th Fl., Springfield IL 62761, 217/782-2043, e-mail: rules@idph.state.il.us

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted an amendment for "Extensions of Jurisdiction" (80 Ill Adm Code 305), effective 5/4/06. A companion emergency rulemaking became effective 1/16/06. In accordance with an American Federation of State, County, and Municipal Employees (AFSCME) collective bargaining agreement, 15 specified employee positions in the Capital Development Board, Illinois Commerce Commission, and the Illinois Emergency Management Agency are placed under the Personnel Code.

(cont'd next page)

Proposed Regulations

POTABLE WATER WELLS AND COMMUNITY RIGHT-TO-KNOW

The Environmental Protection Agency proposed a new Part titled "Right-To-Know Notice Costs" (35 Ill Adm Code 1662) to implement Public Act 94-314, which requires EPA to adopt rules setting forth costs for which parties responsible for the release, or substantial threat of a release, of specified soil or groundwater contamination or specific remedial applicants may be liable. "Costs" are those costs incurred by the State in giving notice of such releases under the Right-To-Know Title [415 ILCS 5/VI-D] of the Environmental Protection Act, and "remedial applicants" are persons who are seeking to perform, or are already performing, investigative or remedial activities. The rulemaking defines terms, details the costs for which parties or applicants are liable, and specifies the manner in which payments will be requested, submitted, and made. Those affected by this rulemaking are small businesses, small municipalities, or not-for-profit corporations that are responsible parties or remedial applicants.

Questions/requests for copies/comments until 7/3/06: Stephanie Flowers, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-5544.


MERCURY EMISSION STANDARDS

The POLLUTION CONTROL BOARD

(cont'd page 2)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

Questions/requests for copies: Denise Connelly, 503 Stratton Bldg., Springfield IL 62706, 217/524-5970.

PUBLIC ASSISTANCE

THE DEPARTMENT OF HUMAN SERVICES adopted an amendment for "Temporary Assistance for Needy Families" (89 Ill Adm Code 112) (TANF), effective 5/8/06. The amendment repeals the Employment Retention and Advancement Project, which is a demonstration project no longer operated by DHS. The project provided intensive education, training, and/or work-related activities for targeted TANF cash clients under age 50 in Cook and St. Clair counties who had been working 30 or more hrs./wk. for 6 or more

consecutive months.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

FIRE PROTECTION

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments for "Storage, Transportation, Sale, and Use of Liquefied Petroleum Gases" (41 Ill Adm Code 200), effective 5/2/06. The rulemaking updates incorporations by reference of the most recent national safety standards and adds correct statutory citations. A further amendment specifies that the national standard regarding the requalification of liquefied petroleum

gas cylinders filled on site in accordance with U.S. Department of Transportation requirements will not become effective until 1/1/08. A change since 1st Notice adds an address for the American Petroleum Institute and the National Fire Protection Association and lists the materials from these 2 organizations that are incorporated by reference. Small businesses that are licensed fire sprinkler contractors or that store and handle liquefied petroleum gases and install gas appliances and gas piping are affected by this rulemaking.

Questions/requests for copies: John Fennell, OSFM, 1035 Stevenson Dr., Springfield IL 62703-4259, 217/785-0969.

Proposed Regulations

proposed a new Part titled "Control of Emissions from Large Combustion Sources" (35 Ill Adm Code 225) to require Illinois coal-fired electric generating units (EGUs) that serve a generator greater than 25 megawatts producing electricity for sale to begin to use mercury control technology necessary to achieve the numerical standards set by this proposed Part beginning 7/1/09. New and existing sources are given 2 alternative mercury emission standards to demonstrate compliance. Through 12/31/13, companies with several sources with EGUs may use averaging demonstrations between the sources; companies with only 1 source are grouped and may average among the listed facilities. The rulemaking also exempts specified EGUs that will be shut down by 12/31/10 or 12/31/11. Other topics covered are permitting, monitoring, recordkeeping, and reporting requirements for affected sources. Also, an identical rulemaking originally proposed in the 3/31/06 *Illinois Register* is withdrawn in this week's *Illinois Register* pursuant to a preliminary injunction entered by the Sangamon County Circuit Court on 5/1/06 in *Dynegy Midwest Generation, Inc., Kincaid Generation, L.L.C., and Midwest Generation, L.L.C. v. Pollution Control*

Board and Illinois Environmental Protection Agency, No 2006-CH-213. The court enjoined the Board from proceeding under Section 28.5 of the Environmental Protection Act to adopt the rulemaking under "fast track" rulemaking procedures. Therefore, PCB instead proposed the same rulemaking this week under its general rulemaking authority.

Questions/requests for copies/comments until 7/3/06: Dorothy Gunn, Clerk, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. For more information: Marie Tipsord at the same address, 312/814-4925, e-mail: tipsordm@ipcb.state.il.us. Please reference docket R06-25.

HOME SERVICES PROGRAM

The DEPARTMENT OF HUMAN SERVICES proposed amendments for "Determination of Need (DON) and Resulting Service Cost Maximums (SCMs)" (89 Ill Adm Code 679), "Eligibility" (89 Ill Adm Code 682), and "Service Planning and Provisions" (89 Ill Adm Code 684). The proposed rulemakings provide individuals served under a DHS Home Services Program (HSP) Medicaid waiver (disabled individual, AIDS, or brain injury) addi-

tional assistance in the event that his or her healthcare expenses surpass an established HSP service cost maximum (SCM). Individuals served under an HSP Medicaid waiver may receive an exceptional care rate comparable to the assessed cost for institutionalization. Exceptional care rates, which are established by the Department of Healthcare and Family Services, are granted to individuals whose healthcare needs cannot be met under the SCM amounts (i.e., technologically dependent patients, ventilator-dependent individuals, etc.). The Part 679 amendment details how exceptional care rates are determined for individuals served under the HSP waiver program. In addition, amendments to Part 682 and Part 684 require an HSP customer's physician to provide a physician's certification at least every 2 years during the HSP customer's redetermination of eligibility. Those affected by these rulemakings include HSP customers that require additional funding for healthcare services that exceed the HSP Medicaid waiver SCMs. Those affected by these rulemakings include physicians and neuropsychologists who certify HSP program participants' need for specific medical services and other healthcare providers who serve

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HSP participants.

DHS RULE WITHDRAWN

DHS also announced withdrawal of proposed amendments for “Developmental Disabilities Services” (89 Ill Adm Code 144) that were published in the 8/26/05 issue of the *Illinois Register*. The withdrawn rulemaking concerned reimbursements to intermediate care facilities for services provided to clients with developmental disabilities. A new section added 4 criteria (specific number of licensed beds, occupancy rate, percentage of facility residents who are Medicaid-eligible, and percentage of residents deemed Medical Level III) that a facility must satisfy in order to receive adjustments in its daily reimbursement rate. The Department states that it is reevaluating a change in its rate methodology and, therefore, decided not to proceed with this rulemaking at this time. Those affected by this rulemaking included private intermediate care facilities for the developmentally disabled and other small-scale residential facilities.

Questions/requests for copies/comments concerning the 3 DHS proposed rulemakings or the withdrawal above until 7/3/06: Tracie Drew at the DHS address and telephone number above.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed a new Part titled “Commuter Savings Program” (80 Ill Adm Code 2190) to outline policies regarding the benefit program that permits State employees to pay for commuting expenses with pre-tax income through payroll deductions. The rule defines “qualified transportation expenses” as mileage reimbursement for transportation in a commuter highway vehicle (a vehicle with capacity for 6 passengers or more primarily used for work-related transportation), any transit pass (e.g., pass, token), or qualified parking. The plan will be administered by a contractual entity instead of CMS. Enrollment or termination in the plan may occur at

any time, and CMS reserves the right to terminate the plan at any time. Although participation in the plan will not reduce a participant’s pension benefits, enrollment does reduce a participant’s contribution (and possible benefits) under the Social Security program. Covered transportation expenses are limited to those not claimed on federal tax forms.

Questions/requests for copies/comments until 7/3/06: Gina Wilson, 720 Stratton Bldg., Springfield IL 62706, 217/785-1793.

POLITICAL CAMPAIGNS

The STATE BOARD OF ELECTIONS proposed a new Section to its rules titled “Campaign Financing Act” (26 Ill Adm Code 207), which outlines how election authorities are to electronically transmit information to the Board, how political committees may access that information, and how the Board will keep a record of entities accessing that information. This new Section is limited to electronic reporting of absentee ballot requests, early voting, and grace-period voting. The transmission in a format prescribed by the Board will occur within one business day after the public posting of the information in the office of the election authority. For primary elections, the election authority must transmit the type of ballot requested. Absentee ballot requests to vote by mail shall transmit the address to which the absentee ballot is to be sent. Except for the address information for absentee ballots, the Board will make the information that is transmitted electronically accessible to registered State and local political committees on a secure website provided the committees obtain an account and password from the Board. Also, the Board will create a computer program that records which political committees access absentee ballot information.

Questions/requests for copies/comments until 7/3/06: Steven S. Sandvoss, St. Bd. of Elections, 1020 S. Spring St., Springfield IL 62708, 217/782-0608.

NATIVE AMERICAN CHILDREN

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed the repeal of “Indian Child Welfare Services” (89 Ill Adm Code 307) and proposed a new Part of the same title and Part number. The Department states that the Part needed to be reformatted to depict the steps in the foster care placement and adoption process for Native American children in a more chronological manner. Also, the new Part more closely tracks regulations under the federal Indian Child Welfare Act concerning notification of parents and child placement that emphasizes maintaining a child’s tribal ties. In addition, the new Part specifies that a parent or Native American custodian of a child may withdraw consent to a foster care placement at any time when such placement was based solely on consent, and the child will be returned to the parent or Native American custodian. However, no action to void or revoke consent to, or surrender for, adoption based on fraud or duress may be commenced more than 24 months after the entry date of the adoption order.

CHILD CARE INSTITUTIONS & MATERNITY CENTERS

DCFS also proposed an amendment for “Licensing Standards for Child Care Institutions and Maternity Centers” (89 Ill Adm Code 404). The Department states that it is incorporating a recommendation made by the Office of the Inspector General to prohibit any familial relationship between the executive director and the chief financial officer of a licensed child care institution or maternity center that is a not-for-profit corporation. (A “child care institution” is a facility where more than 7 children receive care or training with certain exceptions, and “maternity center” refers to facilities that care for one or more unwed pregnant girls under age 18 with the exception of facilities licensed under the Hospital Licensing Act.) Those affected by this rulemaking include licensed child care institutions and maternity centers regulated under this Part.

Proposed Regulations

Questions/requests for copies/comments concerning the 3 DCFS rulemakings above until 7/3/06: Jeff Osowski, DCFS, 406 E. Monroe, Station # 65, Springfield IL 62701-1498, 217/524-1983, TDD 217/524-3715, Fax 217/557-0692, e-mail: cfpolicy@idcf.state.il.us

RENTAL HOUSING PROGRAM

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY announced a correction to the notice pages for a proposed new Part titled "Rental Housing Support Program" (47 Ill Adm Code 380) that was published in the 4/14/06 *Illinois Register*. The original notice failed to state that landlords and municipalities may be affected by this rulemaking and did not specify the reporting, bookkeeping, or other procedures required for compliance with the regulations.

Questions/requests for copies: Richard Muller, IHDA, 401 N. Michigan Ave., Ste. 900, Chicago IL 60611, 312/836-5327.

CONTRACEPTIVE HEARINGS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION announced 3 public hearings concerning amendments for rules titled "Illinois Pharmacy Practice Act of 1987" (68 Ill Adm Code 1330) that were proposed in the 4/

21/06 issue of the *Illinois Register*. The rulemaking requires Division I pharmacies to display a notice of customer rights applicable to dispensing contraceptives and details specific language to be utilized in the required sign. The hearing locations and times are: 5/24/06, 11:00 a.m. to 2:00 p.m. at the Warren Newport Public Library, 224 No. O'Plaine Rd., Gurnee IL 60031; 5/31/06, noon to 2:00 p.m. at the Urbana City Council Bldg., City Council Chamber, 400 S. Vine, Urbana IL 61801; 6/2/06, 11:00 a.m. to 2:00 p.m. at Southern Illinois University in Edwardsville, University Center Bldg., State Route 157, Edwardsville IL 62026.

Questions: Barb Smith, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, Fax 217/557-4451.

SPECIAL EDUCATION HEARINGS

The STATE BOARD OF EDUCATION announced 6 public hearings concerning amendments to "Special Education" (23 Ill Adm Code 226) that were proposed in the 2/10/06 *Illinois Register*. The rulemaking is intended to reconcile the Illinois regulations by June 2006 with the federal Disabilities Education Improvement Act (IDEA 2004) and the U.S. Department of Education's (USDE) revised regulations. IDEA 2004 requires states to provide written identifica-

tion to local school districts and USDE about any rules that constitute a State-imposed requirement that is not required under federal regulations, with an eye toward minimizing the provisions with which a local school district must comply. All of the hearings times are 6:00 p.m. to 8:00 p.m. and the hearing locations are: 5/22/06 at South Elgin High School, Conference Rm. B-100, 760 E. Main St., South Elgin IL, 847/289-3760; 6/13/06 at Freeport Jr. High School, Jeanette Lloyd Theatre, 701 W. Empire St., Freeport IL, 815/232-0329; 6/26/06 at Western Illinois University, University Union, Sandburg Theatre, 1 University Circle, Macomb IL, 309/298-1914; 6/27/06 at Edwardsville High School auditorium, 6161 Center Grove Rd., Edwardsville IL, 618/355-6016; 8/7/06 at Rend Lake College, Learning Resource Center Theatre, 468 No. Ken Gray Pkwy., Ina IL, 618/437-5321; and 8/8/06 at Springfield High School, Commons Area, 101 S. Lewis St., Springfield IL, 217/525-3100.

Questions: Sally Vogl, SBE, 100 N. First St., S-493, Springfield, IL 62777, 217/782-5270, e-mail: rules@isbe.net (NOTE TO READER: SBE specified a 180-day comment period rather than the required minimum 45-day period for this rulemaking. Therefore, the 1st Notice comment period ends 8/8/06.

JCAR Meeting Action

At its May 9, 2006 meeting, the Joint Committee on Administrative Rules voted the 2 Objections below. It also extended the following 3 Department of Agriculture rulemakings for consideration at its June 9th meeting: "Livestock Auction Markets" (8 Ill Adm Code 40; 30 Ill Reg 713), "Diseased Animals" (8 Ill Adm Code 85; 30 Ill Reg 737), and "Animal Welfare Act" (8 Ill Adm Code 25; 30 Ill Reg 704).

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

JCAR objects to Section 1450.140 of DFPR's rulemaking titled "Real Estate License Act of 2000" (68 Ill Adm Code 1450; 29 Ill Reg 17959) because Section 1450.140 lacks clarity in regard to what constitutes prohibited advertising for a property zoned single family.

Meeting Action cont.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

The Committee objects to Section 126.40 of the HFS rulemaking titled "The Illinois Prescription Drug Discount Program" (89 Ill Adm 126; 30 Ill Reg 325) because, while that Section establishes the \$10 enrollment fee, it also allows the HFS Director to lower that fee to reflect actual costs. Not only could this result in HFS implementing policy outside rule, but discretionary changes in the fee could result in inequitable treatment of program participants.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's June 13, 2006 meeting in Chicago.

DEPARTMENT OF REVENUE

"Telefile Program" (86 Ill Adm Code 770) proposed 11/28/05 (29 Ill Reg 19147)

"Payment of Taxes by Electronic Funds Transfer" (86 Ill Adm Code 750) proposed 11/28/05 (29 Ill Reg 19134)

"Electronic Filing of Returns or Other Documents" (86 Ill Adm Code 760) proposed 11/28/05 (29 Ill Reg 19141)

PROPERTY TAX APPEAL BOARD

"Practice and Procedure for Appeals Before the Property Tax Appeal Board" (86 Ill Adm Code 1910) proposed 3/24/06 (30 Ill Reg 5499)

SECRETARY OF STATE

"Business Corporation Act" (14 Ill Adm Code 150) proposed 3/3/06 (30 Ill Reg 2595)

"General Not For Profit Corporations" (14 Ill Adm Code 160) proposed 3/3/06 (30 Ill Reg 2600)

"Limited Liability Company Act" (14 Ill Adm Code 178) proposed 3/3/06 (30 Ill Reg 2603)

"Uniform Commercial Code" (14 Ill Adm Code 180) proposed 3/3/06 (30 Ill Reg 2611)

DEPARTMENT OF LABOR

"Day and Temporary Labor Services Act" (56 Ill Adm Code 260) proposed 12/23/05 (29 Ill Reg 20597)

DEPARTMENT OF NATURAL RESOURCES

"Designation of Restricted Waters in the State of Illinois" (17 Ill Adm Code 2030) proposed 3/24/06 (30 Ill Reg 5492)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Standard Procurement" (44 Ill Adm Code 1) proposed 10/21/05 (29 Ill Reg 15678)

"Acquisition, Management and Disposal of Real Property" (44 Ill Adm Code 5000) proposed 11/28/05 (29 Ill Reg 18977)

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